

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NEONA M.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. 18-5468-BAT

ORDER AFFIRMING THE COMMISSIONER AND DISMISSING THE CASE

Plaintiff seeks review of the denial of her application for Supplemental Security Income and Disability Insurance Benefits. She contends the ALJ erred in (1) assessing the medical opinion evidence, (2) discounting her testimony, and (3) discounting statements written by her mother.¹ Dkt. 13 at 2. For the reasons below, the Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

BACKGROUND

Plaintiff is currently 47 years old, has a GED, and previously worked as a marketing manager and restaurant server. Tr. 333, 350. She filed applications for benefits in 2014 and 2015, alleging disability as of May 18, 2012. Tr. 279-98. Her applications were denied initially

¹ Plaintiff also assigns error to the ALJ's residual functional capacity assessment and the ALJ's step-five findings, but in doing so, reiterates arguments contained in these three assignments of error. Dkt. 13 at 18-19. Accordingly, they will not be addressed separately.

1 and on reconsideration. Tr. 181-87, 189-207. The ALJ conducted a hearing on February 7, 2017
2 (Tr. 38-72), and subsequently found Plaintiff not disabled. Tr. 15-29. As the Appeals Council
3 denied Plaintiff's request for review, the ALJ's decision is the Commissioner's final decision.
4 Tr. 1-6.

5 THE ALJ'S DECISION

6 Utilizing the five-step disability evaluation process, the ALJ found:

7 **Step one:** Plaintiff had not engaged in substantial gainful activity since May 18, 2012.

8 **Step two:** Plaintiff's obesity, diabetes with neuropathy, lumbar and thoracic
9 degenerative disc disease, and depression are severe impairments.

10 **Step three:** These impairments did not meet or equal the requirements of a listed
11 impairment.²

12 **Residual Functional Capacity ("RFC"):** Plaintiff can perform sedentary work with
13 additional limitations: she can occasionally climb ramps and stairs, and never climb
14 ladders, ropes, and scaffolds. She can occasionally balance, stoop, kneel, crouch, and
15 crawl. She requires the use of a cane for ambulating more than ¼ mile, and would need
16 the cane on uneven or rough terrain, but not for standing. She should avoid concentrated
17 exposure to work hazards. She can perform simple, routine tasks. She can have
18 occasional contact with co-workers and the general public, and can perform work
19 involving routine and predictable changes in the work environment. She can frequently
20 handle and finger bilaterally.

21 **Step four:** Plaintiff could not perform her past work.

22 **Step five:** As there are jobs that exist in significant numbers in the national economy that
23 Plaintiff can perform, she is not disabled.

Tr. 15-29.

19 DISCUSSION

20 A. Plaintiff's Testimony

21 The ALJ discounted Plaintiff's testimony for several reasons: (1) the objective evidence

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23 ² 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 did not corroborate her allegations of disabling limitations; (2) she had limited treatment for the
2 conditions that she contends are disabling, and the treatment she has had is routine and
3 conservative; (3) she did not report to her providers all of the symptoms she described at the
4 hearing, and instead reported capabilities beyond what she described at the hearing. Tr. 21-25.
5 Plaintiff argues these reasons are not clear and convincing, as required in the Ninth Circuit. *See*
6 *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014).

7 **1. Inconsistent medical evidence**

8 Plaintiff contends an ALJ may not disregard a claimant's testimony solely based on
9 whether the testimony is supported by the medical evidence. Dkt. 13 at 11. That may be true,
10 but this was not the only reason provided by the ALJ. Plaintiff also argues the ALJ's "selective
11 summary of the medical evidence" does not explain how the record contradicts her testimony
12 (Dkt. 13 at 11-12), but she is mistaken. The ALJ explicitly explained how the medical record
13 contradicts Plaintiff's claim, namely because the alleged disability onset date does not
14 correspond to a worsening of her symptoms, her complaints of functional limitations caused by
15 her neuropathy and spine disorder are not corroborated by testing, and treating providers did not
16 observe a need for a cane/walker for ambulation during most of the adjudicated period. Tr. 21-
17 24. The ALJ's analysis in this case is distinguishable from the mere recital of medical evidence
18 in *Brown-Hunter v. Colvin*, 806 F.3d 487, 489 (9th Cir. 2015). Because the ALJ explained how
19 the medical evidence contradicted Plaintiff's allegations, the ALJ did not err in discounting
20 Plaintiff's testimony on this basis. *See Carmickle v. Comm'r of Social Sec. Admin.*, 533 F.3d
21 1155, 1161 (9th Cir. 2008) ("Contradiction with the medical record is a sufficient basis for
22 rejecting the claimant's subjective testimony.").

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1 **2. Limited treatment**

2 Plaintiff challenges the ALJ's finding that her limited treatment undermined her
3 complaints of disabling symptoms. This is a clear and convincing reason to discount Plaintiff's
4 testimony. *See Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007). Substantial evidence supports
5 the ALJ's determination. Plaintiff's view that receiving narcotic pain medication is not routine
6 or conservative is but one reasonable interpretation of the evidence. As such the Court is required
7 to affirm the ALJ's determination.

8 **3. Inconsistent reports to providers**

9 Plaintiff argues the ALJ erred in finding inconsistencies between how she described her
10 symptoms and limitations in her benefits application, and what she reported to providers.
11 Plaintiff does not dispute she failed to consistently report to providers she needed to recline
12 during the day due to pain, but contends that the providers failed to record everything she
13 reported. Dkt. 13 at 12-13. This is a speculative argument and thus does not establish the ALJ's
14 finding was unreasonable; the argument accordingly fails. *Morgan v. Comm'r of Social Sec.*
15 *Admin.*, 169 F.3d 595, 599 (9th Cir. 1999) ("Where the evidence is susceptible to more than one
16 rational interpretation, it is the ALJ's conclusion that must be upheld.").

17 Plaintiff also argues the ALJ erred in finding that her providers' failure to observe her
18 using a walker does not contradict her testimony that she used a walker since early 2016, because
19 she did not testify that she used a walker all of the time. Dkt. 13 at 13. Plaintiff did, however,
20 testify that she gets "really bad breathing problems" that last 2-4 months and she needs the
21 walker during those times, and yet her treatment notes from 2016 do not corroborate this. *See*
22 Tr. 881-988.

1 The ALJ contrasted Plaintiff's report in 2015 to an examiner that she spent all day in bed
2 and relied on her children for everything, with her contemporaneous treatment notes indicating
3 more functionality. Tr. 25. Plaintiff again argues the providers' failure to document these
4 assertions does not prove that she did not inform them of these limitations (Dkt. 13 at 13), but
5 again this is far from the only reasonable interpretation of the record. Because the ALJ
6 reasonably found that the record contained inconsistent symptom reporting, the ALJ did not err
7 in discounting Plaintiff's testimony on that basis. *See, e.g., Greger v. Barnhart*, 464 F.3d 968,
8 972 (9th Cir. 2006) (affirming the ALJ's rejection of claimant's testimony because he did not
9 report to providers the symptoms he claimed were disabling).

10 **B. Plaintiff's Mother's Statements**

11 The record contains two third-party function report forms completed by Plaintiff's
12 mother. Tr. 373-80, 427-34. The ALJ summarized Plaintiff's mother's statements, and found
13 that her descriptions of Plaintiff's symptoms and limitations were inconsistent with the objective
14 medical evidence, Plaintiff's treatment history, and Plaintiff's activity level "discussed
15 throughout this decision." Tr. 27. The ALJ also noted Plaintiff's mother is not a medical source,
16 which cast doubt on her reliability. *Id.*

17 The Court agrees that Plaintiff's mother's status as a lay witness is not a germane reason
18 in itself to discount her statements. But the ALJ's other reasons are germane: they are the same
19 reasons the ALJ discounted Plaintiff's testimony, and the ALJ explained those reasons in greater
20 detail earlier in the decision. Tr. 21-25. Because the ALJ's reasoning with respect to Plaintiff's
21 testimony was legally sufficient, those reasons are also adequate with respect to Plaintiff's
22 mother's similar testimony. *See Valentine v. Comm'r of Social Sec. Admin.*, 574 F.3d 685, 694
23 (9th Cir. 2009) (because "the ALJ provided clear and convincing reasons for rejecting [the

1 claimant's] own subjective complaints, and because [the lay witness's] testimony was similar to
2 such complaints, it follows that the ALJ also gave germane reasons for rejecting [the lay
3 witness's] testimony").

4 **C. Agency Personnel Statement**

5 Darla Johnson documented some observations of Plaintiff during the benefits application
6 process, and the ALJ failed to discuss those observations. Tr. 413-14.

7 Any error in the ALJ's failure to discuss Ms. Johnson's observations is harmless, because
8 all of the symptoms mentioned by Ms. Johnson were discussed in the ALJ's decision and
9 accounted for in the RFC assessment to the extent the ALJ found them to be supported by
10 substantial evidence. It should also be noted that Ms. Johnson indicated that none of the deficits
11 she witnessed were marked in severity. Tr. 414. Plaintiff has not indicated how the ALJ's
12 decision would have been different if the ALJ had discussed Ms. Johnson's statement, and
13 therefore has failed to meet her burden to show a harmful error.

14 **D. Medical Opinions**

15 Plaintiff contends the ALJ erroneously evaluated several medical opinions.³ An ALJ
16 must provide specific, legitimate reasons to discount a contradicted opinion written by an
17 acceptable medical source, and germane reasons to discount an opinion written by a non-
18 acceptable medical source. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996); *Molina v.*

19
20 ³ Plaintiff's discussion of the medical evidence also includes some arguments that fail to
21 identify a legal error. Specifically, Plaintiff alleges (Dkt. 13 at 3) that the ALJ erred in failing to
22 find that a treatment note written by Greg Zarelli, M.D., corroborates a nurse practitioner's
23 medical opinion, but Dr. Zarelli did not mention any of the functional limitations described by
the nurse practitioner. *See* Tr. 529.

Plaintiff also summarizes the opinions of Todd Bowerly, Ph.D., and states that the ALJ
properly discounted those opinions, but summaries such as this do not establish the ALJ
harmfully erred. Dkt. 13 at 10.

1 *Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). The Court will consider whether the ALJ's
2 decision meets this standard as to each disputed opinion in turn.

3 **1. Mary Ann Browning, NP**

4 In July 2013, Ms. Browning completed a DSHS form opinion describing Plaintiff's
5 symptoms and limitations. Tr. 668-70. Ms. Browning opined Plaintiff could not sit or stand for
6 even short periods of time, experienced drowsiness as a side effect of her medications, and had
7 some memory loss. Tr. 668.

8 The ALJ found Ms. Browning's treatment notes did not corroborate the severity of the
9 limitations described by Ms. Browning, and the evidence generally showed Plaintiff's normal
10 motor strength, improvement with medication, and ability to complete activities of daily living,
11 and did not mention the disabling memory loss or medication side effects described by Ms.
12 Browning. Tr. 26.

13 Plaintiff does not cite any treatment notes that corroborate the extreme limitations she
14 described. Dkt. 13 at 3. While she does cite some evidence of abnormalities, that evidence does
15 not explicitly indicate Plaintiff could not sit or stand for even short periods of time. *Id.* Plaintiff
16 also contends generally narcotic pain medications cause drowsiness (Dkt. 13 at 4), but a
17 layperson's generalization in a court brief does not amount to corroboration for a medical
18 opinion. Plaintiff does not dispute she did not report medication side effects to Ms. Browning, or
19 her treatment notes do not document disabling memory deficits. She accordingly has failed to
20 establish the ALJ harmfully erred.

21 Plaintiff also argues her daily activities are fully consistent with Ms. Browning's opinion,
22 but overlooks the many activities she admitted completing that require sitting or standing for at
23 least short periods of time. *See, e.g.*, Tr. 507 (Plaintiff reported the ability to cook, clean, shop

1 for groceries, and walk short distances for exercise), 689 (Plaintiff reported riding on a quad
2 four-wheeler), 703 (Plaintiff reported upcoming travel), 760 (Plaintiff reported sitting in a car),
3 779 (Plaintiff reported that she completes her activities of daily living independently). Thus,
4 Plaintiff has not shown the ALJ erred in finding that her activities were inconsistent with Ms.
5 Browning's opinion.

6 In short, as the ALJ provided several germane reasons supported by substantial evidence
7 to discount Ms. Browning's opinion, the ALJ did not err in discounting that opinion.

8 **2. George Saltzberg, M.D.**

9 Dr. Saltzberg performed a physical evaluation of Plaintiff in September 2012, and limited
10 her to less than two hours of standing/walking and less than two hours of sitting per workday.
11 Tr. 512-15. The doctor found Plaintiff could lift/carry up to 10 pounds, but could not perform
12 any postural activities. Tr. 515.

13 The ALJ gave some weight to Dr. Saltzberg's opinion, but found it heavily relied on
14 Plaintiff's subjective reporting, and the sitting and postural limitations were inconsistent with the
15 "weak objective evidence" of Plaintiff's spinal disorders and her limited treatment for them. Tr.
16 25-26. Plaintiff argues the ALJ erred in discounting Dr. Saltzberg's opinion based on evidence
17 related to Plaintiff's spinal disorders, because Dr. Saltzberg's opinion was based on Plaintiff's
18 diabetic neuropathy. Dkt. 13 at 8. But Dr. Saltzberg explicitly cited Plaintiff's "back pain" as
19 the only cause of the sitting limitation, and one of the causes of the prohibition on postural
20 limitations. *See* Tr. 515. Plaintiff has not established the ALJ's reasons to discount Dr.
21 Saltzberg's opinion are not specific and legitimate, and thus has not shown error in this aspect of
22 the ALJ's decision.

1 **3. Gregory Allen May, Psy.D.**

2 Dr. May performed a psychological evaluation of Plaintiff in March 2015. Tr. 773-76.

3 The ALJ summarized Dr. May's opinion and discounted it as vague in that it does not explain
4 specifically why Plaintiff is "likely to be unsuccessful at employment at this time." Tr. 776. The
5 ALJ also found Dr. May's opinion was inconsistent with Plaintiff's limited treatment for mental
6 health symptoms, as well as her reports of improvement when she did receive treatment. Tr. 26.

7 In her opening brief, Plaintiff argues because Dr. May's opinion is based on his clinical
8 findings, the ALJ's reasons are not legitimate. Dkt. 13 at 8-9. The bare assertion Dr. May's
9 opinion is supported by his observations does not challenge the reasons provided by the ALJ for
10 discounting Dr. May's opinion. In her reply, Plaintiff argues the ALJ erred because Dr. May
11 discussed many clinical findings that support his opinion, giving some examples. Dkt. 15 at 5.
12 However, even assuming the ALJ erred here, the ALJ also gave other reasons to discount Dr.
13 May's opinions which Plaintiff has failed to show are erroneously. Thus any error the ALJ might
14 have committed in relying on a lack of clinical findings is harmless. *See See Carmickle v.*
15 *Comm'r of Social Sec. Admin.*, 533 F.3d at 1162. In sum Plaintiff has failed to meet her burden
16 to show the ALJ harmfully erred in discounting Dr. May's opinion.

17 **4. Derek J. Leinenbach, M.D.**

18 Dr. Leinenbach examined Plaintiff in April 2014 and March 2015. Tr. 632-35, 778-81.

19 The ALJ gave significant weight to the 2015 opinion (except for the reaching and feeling
20 limitations), which was more restrictive than the 2014 opinion. Tr. 25. Dr. Leinenbach found
21 Plaintiff could reach and feel frequently, but the ALJ found no restrictions in those activities. Tr.
22 20, 781. Specifically, the ALJ found the record did not show significant or persistent deficits in

1 the range of motion of Plaintiff's arms or deficits as to sensation that would justify
2 reaching/feeling limitations. Tr. 20.

3 Plaintiff argues the reaching and feeling limitations were fully consistent with Dr.
4 Leinenbach's findings of peripheral neuropathy, but does not address the findings cited by the
5 ALJ. Dr. Leinenbach himself found Plaintiff's upper extremities had preserved sensation and
6 normal range of motion. Tr. 780. Plaintiff has not shown the ALJ erred in finding that those test
7 results undermined Dr. Leinenbach's conclusions regarding Plaintiff's ability to reach and feel.

8 **5. State agency opinions**

9 Plaintiff notes the ALJ gave significant weight to State agency opinions, but argues
10 Plaintiff's hearing testimony indicates her mental symptoms worsened since the time of State
11 agency review. Dkt. 13 at 10. But the ALJ discounted Plaintiff's hearing testimony for legally
12 sufficient reasons, as discussed *supra*, and therefore Plaintiff has failed to identify an error in the
13 ALJ's assessment of the State agency opinions.

14 **CONCLUSION**

15 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this
16 case is **DISMISSED** with prejudice.

17 DATED this 4th day of March, 2019.

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21 BRIAN A. TSUCHIDA
22 Chief United States Magistrate Judge
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